

Amendment No. 2 to SB3169

**Norris
Signature of Sponsor**

AMEND Senate Bill No. 3169*

House Bill No. 3191

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 50-6-110(c)(1), is amended by deleting the second sentence of this subdivision in its entirety and by substituting instead the following language:

This presumption may only be rebutted by a showing of clear and convincing evidence that such drug or alcohol was not the proximate cause of injury.

SECTION 2. Tennessee Code Annotated, Section 50-6-116, is amended by deleting the section in its entirety.

SECTION 3. Tennessee Code Annotated, Section 50-6-102(12), is amended by deleting the subsection in its entirety and substituting instead the following:

(12)(a) "Injury" and "personal injury", in order to be compensable, shall either:

(1) arise out of and in the course of employment, be proximately caused by a specific accident or incident that is identifiable by time and place of occurrence, result in internal or external physical harm to the body and require medical services or result in disability or death; or

(2) arise out of and in the course of employment, result in the gradual occurrence of internal or external physical harm to the body and require medical services or result in disability or death; provided, however, the injury is not compensable unless it is the major cause of the disability or need for medical services. Major cause means more than fifty percent (50%) of the cause. Carpal tunnel syndrome shall not be compensable unless it is proximately caused by rapid repetitive motion and also meets the criteria of this subsection.

SECTION 4. Tennessee Code Annotated, Section 50-6-204(d)(5) is amended by deleting it in its entirety and substituting instead the following:

(d)

(5) When a dispute as to the degree of medical impairment exists, either party may request an independent medical examiner from the commissioner's registry. Before an independent medical examiner may be chosen pursuant to this section, there shall be at least eight (8) points of differences between the diagnoses of physicians. If the parties are unable to mutually agree on the selection of an independent medical examiner from the commissioner's registry, it shall be the responsibility of the employer to provide a written request to the commissioner for assignment of an independent medical examiner, with a copy of the notice provided to the other party. Upon receipt of such written request, the commissioner shall provide the names of three (3) independent medical examiners chosen at random from the registry. The commissioner shall immediately notify the parties by facsimile or email when the list of independent medical examiners has been assigned to a matter, but in any event the notification shall be made within five (5) business days of the date of the request. The employer may strike one (1) name from the list, with such rejection made and communicated to the other party by facsimile or email not later than the third business day after the date on which notification of the list is provided. The employee shall select a physician to perform the independent medical examination from the remaining physicians on the list. All costs and fees for an independent medical examination and report made pursuant to this subsection shall be paid by the employer. The written opinion as to the permanent impairment rating given by the independent medical examiner pursuant to this subsection shall be presumed to be the accurate impairment rating; provided however, this presumption may be rebutted by clear and convincing evidence to the contrary.

(6) The commissioner of labor and workforce development shall establish by rule, in accordance with the provisions of title 4, chapter 5, an independent

medical examiners registry. The commissioner shall establish qualifications for the independent medical examiners, including continuing education and peer review requirements, with the advice of the Tennessee Medical Association and the Workers' Compensation Advisory Council. The rules established shall include, but not be limited to, qualifications and procedures for submission of an application for inclusion on the registry; procedures for the review and maintenance of the registry and procedures for assignment that ensures that the composition of such panels is random. The rules required by this subsection shall take effect on July 1, 2005. The commissioner is authorized to use public necessity rules under Section 4-5-209(a)(4) or emergency rules under Section 4-5-208, as appropriate in order to have such rules in effect no later than July 1, 2005.

SECTION 5. Tennessee Code Annotated, Section 50-6-241, is amended by adding the following as a new subsection to be appropriately designated at the end of the section:

() Notwithstanding any other provision of this chapter, an employee may not waive the right to reconsideration of a claim under this chapter as authorized by this section or any other provision of law.

SECTION 6. Tennessee Code Annotated, Section 50-6-232(a), is amended by deleting the language "a sum of all future installments of compensation" from the first sentence of the subsection and by substituting instead the language "an amount to a sum equal to the value of all future installments of compensation calculated on the current prime lending rate plus one percent (1%)".

SECTION 7. Tennessee Code Annotated, Section 50-6-229(a), is amended by deleting the language "a sum of all future installments of compensation" from the fourth sentence of the subsection and by substituting instead the language "a sum equal to the value of all future installments of compensation calculated on the current prime lending rate plus one percent (1%)".

SECTION 8. Tennessee Code Annotated, Section 50-6-241(a)(1) is amended by deleting the words “on or after August 1, 1992” and substituting instead the words “on or after August 1, 1992 and prior to July 1, 2004”,

SECTION 9. Tennessee Code Annotated, Section 50-6-241(b), is amended by deleting the words “on or after August 1, 1992” and substituting instead the words “on or after August 1, 1992 and prior to July 1, 2004”.

SECTION 10. Tennessee Code Annotated, Section 50-6-241 is amended by adding the following as new subsection (d):

(d)

(1)

(A) For injuries occurring on or after July 1, 2004, in cases in which an injured employee is eligible to receive any permanent partial disability benefits either for body as a whole or for scheduled member injuries for which the injured employee is eligible to receive benefits for a period of two hundred (200) weeks or longer, and the pre-injury employer returns the employee to employment at a wage equal to or greater than the wage the employee was receiving at the time of the injury, the maximum permanent partial disability benefits that the employee may receive is one and one-half (1 ½) times the medical impairment rating determined pursuant to the provisions of Section 50-6-204(d)(3). In making such determinations, the court shall consider all pertinent factors, including lay and expert testimony, the employee’s age, education, skills and training, local job opportunities, and capacity to work at types of employment available in claimant’s disabled condition.

(B)

(i) If an injured employee receives benefits for body as a whole injuries pursuant to subdivision (d)(1)(A) and the employee is subsequently no longer employed by the pre-injury employer at

the wage specified in subdivision (d)(1)(A) within 400 weeks of the day the employee returned to work for the pre-injury employer, the employee may seek reconsideration of the permanent partial disability benefits.

(ii) If an injured employee receives benefits for scheduled member injuries for which the injured employee is eligible to receive benefits for a period of two hundred (200) weeks or longer pursuant to subdivision (d)(1)(A), and the employee is subsequently no longer employed by the pre-injury employer at the wage specified in subdivision (d)(1)(A), the employee may seek reconsideration of the permanent partial disability benefits. The right to seek such reconsideration shall extend for the number of weeks for which the employee was eligible to receive benefits under Section 50-6-207, beginning with the day the employee returned to work for the pre-injury employer.

(iii) Notwithstanding the provisions of this subdivision (d)(1)(B), under no circumstances shall an employee be entitled to reconsideration when the loss of employment is due to either: (a) the employee's voluntary resignation or retirement, provided such resignation or retirement does not result from the work-related disability which is the subject of such reconsideration; or (b) the employee's misconduct connected with this employment.

(iv) To seek reconsideration pursuant to subdivision (B)(i) or (B)(ii), the employee shall first request a benefit review conference within one (1) year of the date on which the employee ceased to be employed by the pre-injury employer. If the parties are not able to reach an agreement regarding additional permanent partial disability benefits at the benefit review

conference, the employee shall be entitled to file a complaint seeking reconsideration in a court of competent jurisdiction within ninety (90) days of the date of the benefit review conference. Any settlement or award of additional permanent partial disability benefits pursuant to reconsideration shall give the employer credit for prior permanent partial disability benefits paid to the employee. Any new settlement or award regarding additional permanent partial disability benefits remains subject to the maximum established in subdivision (d)(2) and shall be based on the medical impairment rating which was the basis of the previous settlement or award.

(2)

(A) For injuries arising on or after July 1, 2004, in cases in which the pre-injury employer did not return the injured employee to employment at a wage equal to or greater than the wage the employee was receiving at the time of the injury, the maximum permanent partial disability benefits for body as a whole and scheduled member injuries to which the employee is entitled may not exceed six (6) times the medical impairment rating determined pursuant to the provisions of Section 50-6-204(d)(3). The maximum permanent partial disability benefits to which the employee is entitled shall be computed utilizing the appropriate maximum number of weeks as set forth in Section 50-6-207 for the type of injury sustained by the employee. In making such determinations, the court shall consider all pertinent factors, including lay and expert testimony, the employee's age, education, skills and training, local job opportunities, and capacity to work at types of employment available in claimant's disabled condition.

(B) If the court awards a permanent partial disability percentage that equals or exceeds five (5) times the medial impairment rating, the court shall include specific findings of fact in the order that detail the reasons for awarding the maximum permanent partial disability.

SECTION 11. Tennessee Code Annotated, Section 50-6-118(a)(3) is amended by deleting the subdivision in its entirety and substituting instead the following:

(3) Bad faith denial of claims;

SECTION 12. Tennessee Code Annotated, Section 50-6-236, is amended by adding the following as a new subsection:

(m) A workers' compensation specialist is authorized to set mandatory meetings of the parties for a benefit review conference. A specialist is also authorized to hold such mandatory benefit review conferences and to order initiation of temporary disability and medical benefits under this chapter.

SECTION 13. Tennessee Code Annotated, Section 50-6-225(a) is amended by deleting the subsection in its entirety and by substituting instead the following:

(a)

(1) Notwithstanding any provisions of this chapter to the contrary, in case of a dispute over or failure to agree upon compensation under the Workers' Compensation Law between the employer and the employee or the dependent(s) of the employee, the parties shall first submit the dispute to the benefit review conference process provided by the division of workers' compensation.

(2) Either party may file a civil action as provided in Section 50-6-203 in the circuit or chancery court in the county in which the employee resides or in which the alleged injury occurred. In instances where the employee resides outside the state of Tennessee and where the injury occurs outside the state of Tennessee, the complaint shall be filed in any county where the employer maintains an office.

(3) Neither party in a civil action filed pursuant to this section shall have a right to demand a jury.

SECTION 14. Tennessee Code Annotated, Section 50-6-239(c), is amended by deleting subdivisions (2) and (3), by redesignating existing subdivision (4) as subdivision (3), and by substituting instead the following as a new subdivision (2):

(2)

(A) A benefit review conference program is mandatory for all cases under this chapter and a court may not conduct a trial without a report from a workers' compensation specialist pursuant to Section 50-6-240, unless otherwise permitted by this section.

(B) A benefit review conference shall be held within forty-five (45) days of the date the employee reached maximum medical improvement as determined by the treating physician. If the department of labor and workforce development is unable for any reason within such time period to schedule and conduct a benefit review conference for the purpose of mediating all claims the employee may have against the employer, the employer and the employee may:

(i) Agree to have a benefit review conference rescheduled within forty-five (45) days;

(ii) Agree to have a Rule 31 mediator, as qualified under Rule 31 of the Rules of the Supreme Court of the State of Tennessee, conduct the mediation; or

(iii) Petition the court having jurisdiction to appoint a Rule 31 mediator to conduct the benefit review conference.

SECTION 15. Tennessee Code Annotated, Section 50-6-121(c) is amended by adding the following language at the end of the subsection:

The annual report shall include a summary of significant court decisions relating to workers' compensation, including an explanation of their impact on existing policy, and a summary of all permanency awards broken down by judicial district.

SECTION 16. Tennessee Code Annotated, Section 50-6-125, is amended by deleting subsections (e) and (f) in their entirety.

SECTION 17. Tennessee Code Annotated, Section 50-6-204 shall be amended by adding the following as a new subsection to be appropriately designated:

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(1) The commissioner of labor and workforce development is authorized to establish by rule, in accordance with the provisions of title 4, chapter 5, a comprehensive medical fee schedule and a related system which includes, but is not limited to, procedures for review of charges, enforcement procedures and appeal hearings, to implement the fee schedule. In developing the rules the commissioner shall strive to assure the delivery of quality medical care in workers' compensation cases and access by injured workers to primary and specialist care while controlling prices and system costs. The medical care fee schedule shall be comprehensive in scope and shall address fees of physicians and surgeons, hospitals, prescription drugs, and ancillary services provided by other health care facilities and providers. The commissioner may consider any and all reimbursement systems and methodologies in developing the fee schedule.

(2) The commissioner is authorized to retain experts to assist in the development of the fee schedule and related system in accordance with the contracting rules of the department of finance and administration.

(3) The commissioner shall file a copy of such proposed rules with the medical care and cost containment committee, established by §50-6-125, and the workers' compensation advisory council, established by Section 50-6-121, by December 1, 2004. The cost containment committee and the advisory council

shall comment on the proposed rules within thirty (30) days of receiving the rules and shall promptly provide such comments to the commissioner and the special joint committee of the general assembly on workers' compensation. The special joint committee may recommend appropriate legislative action to the general assembly.

(4) The commissioner shall file the rules proposed to implement the provisions of this section with the clerk of the senate, the clerk of the house of representatives, the house consumer and employee affairs committee and the senate commerce, labor and agriculture committee by February 15, 2005.

(5) The rules required by this subsection shall take effect on July 1, 2005. The commissioner is authorized to use public necessity rules under Section 4-5-209(a)(4) or emergency rules under Section 4-5-208, as appropriate in order to have such rules in effect on July 1, 2005.

(6) The commissioner shall review the fee schedules adopted pursuant to this section on an annual basis and when appropriate the commissioner shall revise the fee schedules as necessary.

SECTION 18. Tennessee Code Annotated, Section 50-6-205(b)(3), is amended by deleting the subdivision in its entirety and by substituting instead the following:

(3) Any employer or such employer's insurance carrier who fails to pay compensation as herein provided shall suffer a penalty on any unpaid installments of:

(A) Fifteen percent (15%) on payments that are paid between fifteen (15) days and twenty (20) days after the payment is due;

(B) Twenty percent (20%) on payments that are paid between twenty-one (21) days and thirty (30) days after the payment is due; and

(C) Thirty percent (30%) on payments that are paid more than thirty (30) days after the payment is due.

SECTION 19. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the

act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 20. This act shall take effect on July 1, 2004, except for Sections 4, 16 and 17 which shall take effect on July 1, 2005. For the purpose of promulgating any rule authorized by this act, this act shall take effect on becoming law, the public welfare requiring it.